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In-house lawyers lose professional privilege

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In-house lawyers face a new challenge to claims to legal professional privilege after the Federal Court recently ruled that they have the onus of proving that they are independent from their employer, in order to prevent their advice being produced in court proceedings.

This was the embarrassing situation for Telstra last week in its action against Federal Communications Minister, Helen Coonan, when the Federal Court (Graham, J.) ruled that its in-house legal advice was not covered by legal privilege.

Justice Graham's decision indicates that claims for legal professional privilege by in-house counsel will be treated differently from that of other lawyers.

The decision is the latest in a growing number of judicial decisions concerning legal privilege that have overruled such claims by in-house counsel on the basis that those lawyers are not truly independent or that they are providing commercial advice, as distinct from legal advice.

The decision by Graham, J. takes that trend one step further by indicating that companies must provide evidence about the independence of their in-house lawyers.

This is an important matter upon which *Legal Compliance Newsletter* will maintain an ongoing focus to keep subscribers informed.

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